



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/168922

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 24, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on October 15, 2015.

The issue for determination is whether the agency met its burden to show that it correctly discontinued petitioner's FS for failing to meet Able-Bodied Adult without Dependent (ABAWD) work requirements and for failing to verify his residency effective October 1, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Madeline Rice, ESS  
Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On October 22, 2014 the agency referred the petitioner to FSET.

3. On December 2, 2014 the petitioner participated in FSET orientation and was enrolled into FSET. He signed his FSET Employability Plan (EP) on that date. The EP was updated several times thereafter, the latest being on August 17, 2015.
4. Petitioner did not meet the FSET work participation requirements for December 2014.
5. From January – July 2015, the petitioner was considered exempt from the FSET program due to receiving Unemployment Compensation (UC).
6. On July 6, 2015, the agency was alerted that petitioner's UC ended. The agency determined that he was no longer considered exempt from FSET, and he was referred back to FSET on July 7, 2015.
7. On July 20, 2015 the agency issued a letter to petitioner entitled "Action Required: Discuss FSET Participation". The petitioner was scheduled for July 29, 2015 for the FSET appointment. Petitioner failed to make this appointment.
8. On August 6, 2015 the agency issued another letter to petitioner entitled "Action Required: FSET Employment Plan (EP) Appointment". The petitioner was scheduled for August 17, 2015 for his FSET appointment. Petitioner made this appointment.
9. On August 18, 2015 the agency issued another letter to petitioner entitled "Action Required: FSET Workshop Appointment". The petitioner was scheduled for August 20, 2015 for the FSET appointment. Petitioner failed to make this appointment.
10. On August 24, 2015 the agency received the August 6, 2015 notice as returned and undeliverable. The agency attempted to call petitioner to question his residency but petitioner did not answer.
11. On August 24, 2015 the agency issued a Notice of Proof Needed to petitioner requesting he provide proof of his residency. The information was due back to the agency on September 3, 2015.
12. On September 4, 2015 the agency issued a letter to petitioner entitled "Action Required: Discuss FSET Participation". The petitioner was scheduled for September 15, 2015 for the FSET appointment. Petitioner failed to make this appointment.
13. On September 8, 2015 the agency issued a notice to petitioner stating that his FS was ending on October 1, 2015 because he did not provide the requested proof of his residency.
14. On September 18, 2015 the agency issued a letter to petitioner entitled "Action Required: Discuss FSET Participation". The petitioner was scheduled for September 29, 2015 for the FSET appointment. Petitioner failed to make this appointment.
15. Petitioner did not meet the FSET work participation requirements for August or September 2015.

### **DISCUSSION**

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement. As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat. §49.79(10), which required FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24.

Under ABAWD rules, childless, able-bodied adults must either meet ABAWD work requirements or be exempt from the work requirement in order to receive FoodShare (FS) benefits. See *FS Handbook*

§3.17.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. ABAWDs who are not exempt and who do not meet the work requirement are only allowed to receive 3 full months of time-limited benefits (TLBs) in a 36-month period. *Id.*

Non-ABAWDs are not subject to time-limited FS benefits (TLBs). The agency defines non-ABAWDs as:

**NON-ABAWD:** A FoodShare applicant or member is determined a non-ABAWD if he or she meets any one of the following criteria, as determined by the IM agency:

- Under age 18\* or age 50\*\* and older;
- Unable to work;
- Residing in a FoodShare household with a child under age 18\*\*\*; or
- Pregnant.

\*Age 18: ABAWD status applies the month following the month the FS recipient or applicant turns age 18.

\*\*Age 50: ABAWD status is lost the first day of the month an ABAWD turns age 50.

\*\*\* Individuals who reside with and are included in the same food unit as a child under age 18 are non-ABAWDs, even if that child is ineligible for FoodShare. See section [3.3.1.1](#) for food unit requirements).

Non-ABAWDs are not subject to time-limited FS benefits (TLBs).

**Note:** Individuals who are coded as out of the home, including children placed in foster care and out of home tax dependents and co-filers, do not make an individual a non-ABAWD.

See *FS Handbook*, §3.17.1.4.

An ABAWD may be exempt from work requirements if the person:

1. Is determined unfit for employment, which includes someone who is:
  - a. Receiving temporary or permanent disability benefits from the government or a private source;
  - b. Mentally or physically unable to work, as determined by the IM agency;
  - c. Verified as unable to work by a statement from a health care professional or social worker;
2. Is responsible for the care of a child under age 6 or caring for an incapacitated person, either of which live outside the home;
3. Is receiving Unemployment Compensation (UC), or has applied for UC and is complying with UC work requirements;
4. Is regularly participating in an alcohol or other drug addiction (AODA) treatment or rehabilitation program;
5. Is a student of higher education and is otherwise eligible for FS ([3.15.1](#));
6. Is a full-time high school student age 18 or over;
7. Is receiving Transitional FS benefits; or
8. Is meeting the ABAWD work requirement.

See *FS Handbook*, §3.17.1.5.

An ABAWD meets the ABAWD work requirement by doing one of the following:

1. Working a minimum of 80 hours per month. Use converted work hours if paid weekly or bi-weekly;
2. Participating and complying with an allowable work program at least 80 hours per month; \* [includes FSET]
3. Both working and participating in an allowable work program for a combined total of at least 80 hours per month; or
4. Participating and complying with the requirements of a workfare program.

*FS Handbook*, §3.17.1.7.

Petitioner had a host of reasons for his lack of participation in FSET and stated that he never received the written notices that were mailed to him. The agency appeared and testified about the appointment notices that were mailed to his address of record. Petitioner identified four different apartments that he was living in at his address of record from April-October, as well as living in the basement there for a period of about two months during that time. The agency did what it was supposed to do – mail his notices to his address of record on file with the agency. Petitioner described not having a mailbox key to retrieve his mail for any of these apartments, and his brother and wife not giving him his mail when he was living with them in apartment #31. The problem is that he is the person responsible for providing his address of record to the agency, which he did, and on which the agency relied and mailed his notices. If he could not receive his own mail at his own address of record the fault lies with him for using that address. He may want to consider requesting that the agency use a “general delivery” mailbox through the post office so that he can retrieve his mail.

Petitioner failed to meet the work requirement, whether it be through FSET or otherwise, and is only allowed to receive 3 full months of TLBs, as he did in December 2014, August 2015 and September 2015. The information he presented at hearing does not show that he was meeting the work requirements for August or September, and there is no information to show that he did in December. Accordingly, I must find that he has exhausted his TLBs and the agency acted correctly in terminating his FS on that basis. I also find that the agency correctly closed his FS case for failing to verify his residency. See *FS Handbook*, §1.2.1.2.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division’s hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The agency met its burden to show that it correctly discontinued petitioner’s FS for failing to meet ABAWD work requirements and for failing to verify his residency effective October 1, 2015.

**THEREFORE, it is**

**ORDERED**

The petition for review is hereby DISMISSED.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

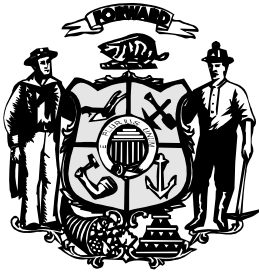
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 10th day of November, 2015

---

\sKelly Cochran  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 10, 2015.

Racine County Department of Human Services  
Division of Health Care Access and Accountability